



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,352	08/19/2004	Richard W LeVaughn	2G02.1-080 US	5981

23506 7590 03/31/2008
GARDNER GROFF GREENWALD & VILLANUEVA. PC
2018 POWERS FERRY ROAD
SUITE 800
ATLANTA, GA 30339

EXAMINER

STOUT, MICHAEL C

ART UNIT	PAPER NUMBER
----------	--------------

3736

MAIL DATE	DELIVERY MODE
-----------	---------------

03/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/505,352	Applicant(s) LEVAUGHN ET AL.	
	Examiner MICHAEL C. STOUT	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22,24,29-31,35,36,46,47 and 69-77 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-22,24,29-31,35,36,46,47 and 69-77 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 1-20, and 69-71, drawn to a lancing device.

Group 2, claim(s) 21, drawn to a lancing device having protective caps.

Group 3, claim(s) 22, 72-77, drawn to a lancing device comprising a biasing element.

Group 4, claim(s) 24, drawn to drawn to a device comprising a specific biasing means.

Group 5, claim(s) 29-31, 35, 36, drawn to a lancet device comprising recession.

Group 6, claim(s) 46 and 47, drawn to a lancing cassette.

2. The inventions listed as Groups 1-6 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The common technical features of Claim 1, lack novelty under PCT Article 33(2) as being anticipated by KUHR et. al. (EP 0985376). Kuhr et al. discloses a housing (1); a cassette removably mounted in the housing, the cassette having a plurality of lancets (2) having a lancet body and a protective cap (14); a piston for propelling the lancet along a path of travel (15), the piston releasably engaging the lancet and causing separation of the lancet body and the cap (14) along at least a portion of the path of travel of the lancet. The cassette has guides (3) defining the path of travel of the lancet.

Art Unit: 3736

The common technical features Claims 21, 22, 24, 29, and 46 lack novelty under PCT Article 33(2) as being anticipated by SCHRAGA (US 6,228,100 B1).

In reference to claims 21, 22, 29, and 46 Schraga discloses at least one lancet (70) having a sharp tip and a protective cap (72) covering the sharp tip; a spring (27) for driving the lancet (70) from a first position to a second position; a cocking mechanism engaging successive lancets and arming the ring (col. 6, lines 21 - 67). A biasing element (90) for moving cap out of a path of travel of said lancet. Each lancet body has at least one grip flange (76) for cooperation with a cocking mechanism. Each lancet body has guide surfaces to guide the lancet for stable movement without rotation or twisting of the body. Schraga discloses a circular cassette/carrier (Figure 1) having a plurality of lancets (70) having a lancet body, tip, and protective cap (72); a carrier defining a path of travel for each lancet; and a retainer for retaining each lancet (see Figure 4).

There is a clear lack of unity of the invention because the common special technical features of the independent claims of Groups 1-6 is anticipated by the above refereces and the remaining subject matter of each clam differs from that of the others without there being any unifying novel inventive concept.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Contact Info

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL C. STOUT whose telephone number is (571)270-5045. The examiner can normally be reached on M-F 7:30-5:00 Alternate (Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3736

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. C. S./
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736